

Message Text

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ORIGIN STR-02

INFO OCT-01 EUR-12 IO-10 ISO-00 SSO-00 NSCE-00 USIE-00

INRE-00 AID-05 CEA-01 CIAE-00 COME-00 EB-07 EA-06

FRB-03 INR-07 NEA-09 NSAE-00 OPIC-03 SP-02 TRSE-00

CIEP-01 LAB-04 SIL-01 OMB-01 PA-01 PRS-01 /077 R

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APPROVED BY STR:MPOMERANZ

EB/OT/STA:WCLARK/MNAYOR

DEFENSE:RBOOTEN

COMMERCE:KKUWABARA

LABOR:RMOODY

TREASURY:JJOHNSON

----- 014917

O R 201223Z MAR 75

FM SECSTATE WASHDC

TO USMISSION OECD PARIS IMMEDIATE

AMEMBASSY OTTAWA IMMEDIATE

INFO USDEL MTN GENEVA

USMISSION GENEVA

USMISSION EC BRUSSELS

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E.O. 11652: N/A

TAGS: ETRD, OECD

SUBJECT: GOVERNMENT PROCUREMENT

1. OECD MISSION REQUESTED TO GIVE FOLLOWING TEXT TO OECD
SECRETARIAT. SECRETARIAT SHOULD BE ASKED TO DISTRIBUTE IT
ASAP TO ALL GOVERNMENTS FOR STUDY AND USE AT APRIL 21 MEETING
OF TCWP. TEXT IS INTENDED TO PROVIDE A BASIS FOR FURTHER
DISCUSSION OF ALL MATERIAL AT END OF EXISTING DOCUMENT
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TC(73)15 BEGINNING WITH PARAGRAPH 36 (BUT NOT INCLUDING

SECTION NOW NUMBERED V., FINAL PROVISIONS). WE BELIEVE THAT SUGGESTED TEXT TAKES FULL ACCOUNT OF RECENT TCWP DISCUSSION ON SUBJECTS OF SURVEILLANCE, NON-DISCRIMINATION, BILATERAL CONSULTATIONS AND APPEAL PROCEDURES, AND SHOULD THEREFORE PROVIDE A BASIS FOR MORE RAPID PROGRESS IN DISCUSSIONS OF THESE AREAS OF PROPOSED AGREEMENT.

2. EMBASSY OTTAWA REQUESTED TO PROVIDE TEXT TO T.A. BERNES OF THE OFFICE OF GENERAL RELATIONS OF THE INDUSTRY, TRADE AND COMMERCE MINISTRY, AS PROMISED BY MORTON POMERANZ (STR).

3. TEXT IS AS FOLLOWS: BEGIN QUOTE IV. SURVEILLANCE: 36. A COMMITTEE ON GOVERNMENT PROCUREMENT IS TO BE ESTABLISHED. ALL SIGNATORY GOVERNMENTS OF THIS INSTRUMENT ARE TO BE REPRESENTED ON THAT COMMITTEE.

37. SIGNATORY GOVERNMENTS SHALL NOTIFY THE COMMITTEE WITHIN 60 DAYS OF ANY CHANGE IN THEIR LAWS, REGULATIONS, AND PROCEDURES, AND IN THE APPLICATION OF THE SAME, WHICH AFFECT THE IMPLEMENTATION OF THIS INSTRUMENT. SIGNATORY GOVERNMENTS SHALL PARTICULARLY NOTIFY THE COMMITTEE OF ANY CHANGES THAT MAY CONCERN EITHER THE LISTS OF PURCHASING ENTITIES IN ANNEX I, OR THE PUBLICATIONS IN WHICH NOTICES OF TENDERS ARE TO BE FOUND, LISTED IN ANNEX II, OR ANY OTHER RELEVANT INFORMATION FOR THE IMPLEMENTATION OF THE PRESENT INSTRUMENT.

38. THE COMMITTEE SHALL NORMALLY MEET ONCE EACH YEAR TO REVIEW DEVELOPMENTS WITH RESPECT TO GOVERNMENT PURCHASING, CHANGES IN THESE POLICIES, PROCEDURES AND PRACTICES, AND THE FUNCTIONING OF THIS INSTRUMENT. THE COMMITTEE SHALL ALSO MEET AT THE REQUEST OF ANY SIGNATORY GOVERNMENT TO CONSIDER ANY MATTER THAT SUCH A GOVERNMENT MAY WISH TO SUBMIT TO IT.

V. DISPUTE SETTLEMENT: 39. IT IS THE FIRM INTENTION OF SIGNATORIES TO THIS INSTRUMENT THAT ALL DISPUTES UNDER THIS INSTRUMENT SHALL BE EXPEDITIOUSLY RESOLVED BETWEEN THE CANDIDATE/SUPPLIER AND THE PROCURING OFFICER OR WITH THE PROCURING AGENCY UNDER THE TERMS OF PARAGRAPHS 33 AND 34.

40(A) SIGNATORY GOVERNMENTS SHALL COMPLY WITH THE REQUEST OF LIMITED OFFICIAL USE

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ANOTHER SIGNATORY GOVERNMENT FOR CONSULTATION ON PROBLEMS RELATING TO GOVERNMENT PROCUREMENT ARISING FROM THE APPLICATION OF THIS INSTRUMENT GENERALLY OR TO ANY PARTICULAR DISPUTE NOT EXPEDITIOUSLY RESOLVED UNDER THE TERMS OF PARAGRAPHS 33 AND 34.

(B) IN SUCH INSTANCES THE GOVERNMENT TO BE CONSULTED SHALL, UPON REQUEST, PROMPTLY SUPPLY ALL THE INFORMATION NECESSARY TO ILLUMINATE THE FACTS UNDERLYING THE CONTROVERSY. SIGNATORY

GOVERNMENTS UNDERTAKE, THEREFORE, TO MAINTAIN STATISTICS ON THEIR PROCUREMENTS WHICH, IN THE EVENT OF A DISPUTE ALLEGING DISCRIMINATION IN A SPECIFIC PRODUCT AREA, CAN BE MADE AVAILABLE TO A GOVERNMENT MAKING THE COMPLAINT AS A BASIS FOR DETERMINING THE MERITS OF THE CASE.

(C) CONFIDENTIAL INFORMATION PROVIDED TO A CONSULTING GOVERNMENT SHALL NOT BE REVEALED WITHOUT FORMAL AUTHORIZATION FROM THE GOVERNMENT PROVIDING THE INFORMATION.

41. IN THE UNUSUAL EVENT OF SERIOUS DIFFICULTIES BETWEEN SIGNATORY COUNTRIES WHICH CANNOT BE SETTLED SATISFACTORILY BY BILATERAL CONSULTATIONS, THE PARTIES SHALL REFER THE MATTER TO THE COMMITTEE ON GOVERNMENT PROCUREMENT. IN SUCH CASES THE COMMITTEE SHALL USE ITS GOOD OFFICES FOR THE PURPOSES OF RESOLVING THE CONTROVERSY. IN THE EVENT THAT ANY DISPUTE IS NOT RESOLVED AS A RESULT OF REFERRAL TO THE COMMITTEE, ANY PARTY TO THE DISPUTE HAS THE RIGHT TO REFER THE MATTER TO AN AD-HOC SUBCOMMITTEE OF THE COMMITTEE ON GOVERNMENT PROCUREMENT.

(A) THE AD-HOC SUBCOMMITTEE SHALL BE COMPOSED OF PERSONS WHO ARE KNOWLEDGEABLE ABOUT PROCUREMENT AND ABOUT THIS INSTRUMENT AND WHO ARE CITIZENS OF THOSE SIGNATORY COUNTRIES NOT IMMEDIATELY INVOLVED IN THE CONTROVERSY. THE PARTY OR PARTIES TO EACH SIDE OF THE DISPUTE SHALL NOMINATE TWO PERSONS TO THE AD-HOC SUBCOMMITTEE AND THE FIFTH MEMBER SHALL BE JOINTLY APPOINTED BY THE OTHER FOUR MEMBERS.

(B) THE AD-HOC SUBCOMMITTEE SHALL ARRIVE AT A DECISION WITHIN ONE YEAR. IT SHALL KEEP A RECORD OF ITS EFFORT TO RESOLVE THE CONTROVERSY; PROVIDE AN OPPORTUNITY FOR THE FULL PRESENTATION OF EVIDENCE WITH REGARD TO ANY PARTICULAR DISPUTE AND WITH LIMITED OFFICIAL USE

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REGARD TO THE ACTION, IF ANY, TAKEN UNDER THE TERMS OF PARAGRAPHS 33 AND 34; BE GUIDED BY EARLIER INTERPRETATIONS OF THE INSTRUMENT AND PRIOR PRECEDENTS IN DISPUTE SETTLEMENT CASES; PROVIDE A RULING ON THE MATTER AND FORMULATE RECOMMENDATIONS TO THE PARTY OR PARTIES CONCERNED; AND, IF THE SUBCOMMITTEE DETERMINES THAT THE ORIGINAL COMPLAINT IS JUSTIFIED, AND THE OFFENDING GOVERNMENT OR GOVERNMENTS DO NOT AGREE TO REMEDY THE SITUATION WITHIN 60 DAYS OF THE RULING, IT SHALL RECOMMEND WHICH COMPENSATING ACTION THE COMPLAINANT GOVERNMENT OR GOVERNMENTS MAY TAKE WITH RESPECT TO ITS/THEIR COMMITMENT UNDER THE INSTRUMENT. SUCH RECOMMENDATIONS SHALL BEAR A DIRECT RELATIONSHIP TO THE DEGREE OF REDUCTION OR IMPAIRMENT OF BENEFITS CAUSED BY THE ACTION COMPLAINED OF.

42. BARRING EARLIER SETTLEMENT OF THE CONTROVERSY, THE

RULING AND RECOMMENDATIONS OF THE AD-HOC SUBCOMMITTEE SHALL BE IMPLEMENTED UNLESS, WITHIN 60 DAYS OF THE RECOMMENDATION FOR COMPENSATORY ACTION, THE COMMITTEE ON GOVERNMENT PURCHASING DETERMINES THAT SUCH RULING IS INCONSISTENT WITH EARLIER PRECEDENTS AND INTERPRETATIONS IN SUCH CASES.

VI. BENEFITS OF THE AGREEMENT: 43. THE OBLIGATIONS OF THIS INSTRUMENT SHALL BE BINDING ON ALL GOVERNMENTS SUBSCRIBING TO IT. EACH SUBSCRIBING GOVERNMENT WILL ACCORD THE BENEFITS OF THE INSTRUMENT TO NATIONALS AND COMPANIES OF ANY SUBSCRIBING GOVERNMENT WHEN OFFERING GOODS, AT LEAST 50 PERCENT OF THE VALUE OF WHICH ORIGINATED WITHIN THE TERRITORY OF ONE OR MORE OF THE SUBSCRIBING GOVERNMENTS. GOVERNMENTS SHALL BE FREE TO EXTEND EQUAL OR MORE FAVORABLE TREATMENT THAN THAT PROVIDED IN THE INSTRUMENT TO ANY OTHER GOVERNMENT. IN THIS REGARD DUE ACCOUNT SHALL BE TAKEN OF THE NEEDS OF THE DEVELOPING COUNTRIES. IF ANY SUBSCRIBING GOVERNMENT EXTENDS TO ANY DEVELOPED COUNTRY AN ADVANTAGE GREATER THAN THAT PROVIDED IN THIS INSTRUMENT, THE SAME ADVANTAGE SHALL BE EXTENDED TO ALL SUBSCRIBING GOVERNMENTS. END QUOTE. INGERSOLL

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Margaret P. Grafeld
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